

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p>Duane Huber</p> <p>Mosby Irrigation Company Attn: Martin Huber</p> <p>RESPONDENT</p>	<p>MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</p> <p>SEAA No. 1345 DISTRIBUTION ACCOUNT: 100605, 100593 WATER RIGHTS: 45-515, 522, 523, 524, 905, 906, 5246, 5284 et al.</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:*
 - (a) each location where water is diverted from a source; and*
 - (b) any other location required by the state engineer.*
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.*
- (3) The state engineer shall approve the design of:*
 - (a) the measuring device; and*
 - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...*
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:*
 - (a) forbid the use of water until the user complies with the state engineer's requirement; and*
 - (b) commence enforcement proceedings authorized by Section 73-2-25.*

II. STATEMENT OF FACTS

1. The Respondent diverts water from Deep Creek/Mosby Creek at what is known as the Confluence Diversion.
2. The water diverted should be metered and periodically checked for meter accuracy.

SCANNED

3. There is a need to periodically measure the streamflow at this location but the water diverted and then spilled back to the stream is not metered or measured because it doesn't pass over the diversion structure weir and is not diverted and metered.
4. The meter is located near the point North 476 ft and East 433 ft from the SW Corner of section 4, T 1 North Range 2 East, US B&M.

III. ACTIONS REQUIRED

1. The respondent must maintain a meter or other means to enable the commissioner to occasionally measure the water diverted and bypassed at the confluence diversion.
2. There should be a backup measuring device that can be used to periodically verify the calibration of the pipeline meter. This may include something as simple as the ability to measure the total of both the diversion and bypass and then shut down the diversion momentarily while again measuring the total flow as it is bypassed over the diversion dam in order to verify the meter is calibrated and obtain a total flow measurement at this location.
3. The work must be completed before April 15, 2010.

IV. ADDITIONAL AGENCY ACTION

1. The Respondent is encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.
2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondent has complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondent, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation of an Order, the Respondent may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondent may be liable for expenses incurred by the Division in investigating and stopping the violation."

V. FURTHER INFORMATION

If the Respondent has any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert Leake
Regional Engineer
Vernal Office/Eastern Region

*Utah Division of Water Rights
(435) 781-5327*

Ben Anderson
*Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469*

*1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300*

Dated this 30th day of September, 2009



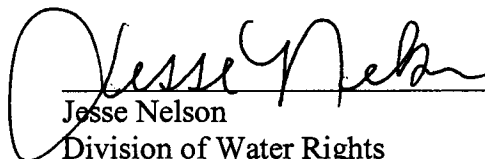
Ben L. Anderson, P.E.
Water Rights Distribution Engineer

CERTIFICATE OF MAILING

I, the undersigned, certify that on this 30 day of September, 2009, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Duane Huber
Upper Ranch
P O Box 428
Lapoint, UT 84039

Mosby Irrigation Co.
attn: Martin Huber
PO BOX 453
Lapoint, UT 84039



Jesse Nelson
Division of Water Rights
Field Services Secretary

cc: Robert Leake, Regional Engineer
Kristopher Blanchard, Water Commissioner

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:
0306 1400 0001 9804 1610

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

Upper
Duane Huber Ranch
(Please Print Clearly) PO BOX 428
LaPoint, UT 84039

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Here

POSTAL CUSTOMER:

Keep this receipt. For Inquiries:
Access internet web site at
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PS Form 152, May 2002

SEAA 1345

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DELIVERY CONFIRMATION NUMBER:
0306 1400 0001 9804 1627

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Article Sent To: (to be completed by mailer)

Martin Huber
Mosby Irr. Co.
(Please Print Clearly) PO BOX 453
LaPoint, UT 84039

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Keep this receipt. For Inquiries:
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